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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,195	10/20/2003	Triveni P. Shukla	00030-001	4432

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EXAMINER
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DONOVAN, MAUREEN C

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/689,195

Applicant(s)

SHUKLA ET AL.

Examiner

Maureen C Donovan

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 4-6 are objected to because of the following informalities: The first letter of the first word of each claim should be capitalized. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The metes and bounds of the claim are unclear between claims 3-5 since each is an independent claim to a sauce of the same composition with a different title as to the type of sauce, however the titles of the sauces overlap in meaning and therefore it is unclear how the claims differ from each other. Claim 4 recites a "creamy type" sauce, which would encompass both cheese sauce (claim 3) and alfredo sauce (claim 5). Claim 3 recited a "cheese" sauce, which would be encompassed by a creamy sauce (claim 4) and encompasses an alfredo sauce (claim 5) since traditional alfredo sauce contains parmesan cheese. Claim 5 recites an "alfredo" sauce, which would be encompassed by a creamy sauce (claim 4) and encompassed by a cheese sauce (claim 3). The overlap of the claims makes the claims indefinite as to the scope of the claimed invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by McGinley, US patent number 5 192 569.

McGinley discloses food products containing an aqueous dispersion comprised of a dietary fiber gel, water and lipid. McGinley discloses the use of microcrystalline cellulose (see Column 4, lines 15-16), which is a source of dietary fiber and is a gel in water (see Column 3, lines 39-50), therefore is a dietary fiber gel. McGinley discloses the use of a lipid with the dietary fiber gel (see Column 6, lines 45-68). McGinley discloses adding the dietary fiber and lipid to water to form an aqueous dispersion (see Column 7, lines 59-63) and then adding that aqueous dispersion to a food product as a fat replacement (see Column 1, lines 25-30 and 36-37). The aqueous dispersion as disclosed by McGinley comprises a dietary fiber gel, water and lipid; thus, it is the same as the emulsified liquid shortening composition, even though such term is not used in the reference. McGinley discloses that the solids contained within the dietary fiber gel represent 1-50% by weight of the overall food formulation (see Column 8, lines 5-20), which encompasses weight percents in the range as instantly claimed. McGinley teaches the use of the mixture of dietary fiber gel, water and lipid in dry or dispersed form in various foodstuffs including sauces and other water based foods (see Column 7,

lines 1-2 and lines 57-68 and see Column 8, lines 21-25). The Office interprets the reference to inherently disclose sauces with the different flavors as claimed (cheese and alfredo), to inherently disclose creamy sauces, gravies as well as disclose sauce mixes; since cheese, alfredo, gravy and creamy are all types of sauces and are all water based foods, and since the reference discloses the use of the mixture in dry or dispersed form which encompasses a sauce mix and a reconstituted sauce.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of copending Application No. 10/689274. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim the same emulsified liquid shortening composition in similar type food products that are not patentably distinct, in that sauces and soups are both water based foods, that can have different flavors and

that can be in dried or reconstituted format and both applications claim overlapping weight percentages that the emulsified liquid shortening is present in the foodstuffs.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Baer et al, US patent number 5 011 701 discloses an aqueous dispersion comprising dietary fiber gel, water and lipid.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen C Donovan whose telephone number is (571) 272-2739. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCD

  
KEITH HENDRICKS  
PRIMARY EXAMINER